

TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS

NOTICE IS HEREBY GIVEN

The California Corporations Commissioner ("Commissioner") proposes to amend Sections 260.140.8, 260.140.41, 260.140.42, 260.140.45, and 260.140.46 of Title 10, California Code of Regulations, under the Corporate Securities Law of 1968, as amended (the "CSL"), relating to the standards for the exercise of the Commissioner's authority with respect to compensatory benefit plans.

PUBLIC HEARING

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8, subdivision (a), of the Government Code. The request for hearing must be received by the Department of Corporations' ("Department") contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department, addressed to Karen Fong, Office of Law and Legislation, Department of Corporations, 1515 K Street, Suite 200, Sacramento, CA 95814-4052, no later than 5:00 p.m. on **December 18, 2006**. Written comments may also be sent to Karen Fong (1) via electronic mail at regulations@corp.ca.gov or (2) via fax at (916) 322-5875. If this day is a Saturday, Sunday or state holiday, the comment period will close at 5:00 p.m. on the next business day.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department regulates the offer and sale of securities pursuant to the CSL. Under the CSL, it is unlawful to offer or sell a security unless the offer or sale is qualified by the Commissioner, is exempt from qualification, or not subject to qualification. (See Corporations Code Section 25110.)

Under Corporations Code Section 25140, the Commissioner may refuse to qualify an issuance of securities unless the Commissioner finds that the proposed issuance of securities is "fair, just, and equitable." The Commissioner has adopted qualification guidelines for various types of offerings of securities, including securities issued pursuant to compensatory benefit plans. In addition, compliance with the guidelines serves as a condition precedent to the availability of the exemption set forth in subdivision (o) of Corporations Code Section 25102 for plans that otherwise comply with Rule 701 ("Rule 701") of the Securities Act of 1933, as amended (17 C.F.R. 230.701).

The Commissioner believes that compensatory benefit plans play an important and positive role in the development of businesses, especially newer and smaller businesses that seek to utilize capital to grow rather than for individual compensation. These plans can provide the opportunity for employees, officers, directors, consultants

and others to participate in the potential future growth of the company where they work. Options, when awarded and exercised in a lawful and proper manner, can serve as a powerful incentive for employees to enhance business growth and create shareholder value.

The Commissioner is unaware of any other state that imposes similar requirements to California. The Commissioner has concerns that the Compensatory Plan Regulations may not achieve an appropriate level of uniformity and consistency with regulation by the other states and the federal securities laws, may impose a burden on businesses seeking to create jobs and expand operations in California, and may unduly restrict the ability of Californians from participating in compensatory benefit plans. See Corporations Code Section 25612.5(b)(1) (prescribing rules with a view to achieving maximum uniformity of registration statements, applications, and reports wherever practicable).

Accordingly, the Commissioner has determined that the standards adopted in Sections 260.140.8, 260.140.41, 260.140.42, 260.140.45 and 260.140.46 should be amended. The proposed amendments would (i) conform the class of eligible persons to those persons described in Rule 701, (ii) eliminate the restriction on the minimum exercise price for options and the minimum purchase price for securities, (iii) eliminate the minimum vesting period for non-management employees, (iv) permit security holder approval of a plan or agreement at any time prior to the grant of an option or issuance of a security under such plan or agreement in California and (v) provide a limited waiver from the security holder approval requirement for foreign private issuers.

The proposed amendments clarify that (i) the right to exercise an option in the event of termination of employment may not be extended past the original option expiration date and (ii) options may not be granted pursuant to any option plan and securities may not be issued pursuant to any purchase plan more than 10 years after the earlier of the date that the plan was adopted or approved by the issuer's security holders, whichever is earlier.

Finally, the proposed amendments exclude plans seeking to utilize the exemption in Corporations Code Section 25102(o) from having to include provisions regarding rights of repurchase, voting rights, limitations on the number of securities, and information to security holders.

AUTHORITY

Sections 25102, 25140, 25610 and 25612.5, Corporations Code.

REFERENCE

Sections 25102, 25110, 25140, and 25612.5 Corporations Code.

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be available to the public at least 15 days prior to the date the Department adopts the regulations. A request for a copy of

any modified regulations should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulations for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS/INTERNET ACCESS

The express terms of the proposed action and the initial statement of reasons may be obtained from the Department's website at www.corp.ca.gov. Further, the text may be obtained upon request from any office of the Department. Request Document PRO 27/06-B. An initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. Request Document PRO 27/06-C. As required by the Administrative Procedure Act, the Office of Law and Legislation maintains the rulemaking file, which is available for public inspection at the Department of Corporations, Office of Law and Legislation, 1515 K Street, Suite 200, Sacramento, California.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISCAL IMPACT

- Cost or Savings to any State Agency: None.
- Direct or Indirect costs or savings in federal funding to the state: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.

DETERMINATIONS

The Commissioner has made an initial determination that the proposed regulatory action:

- Does not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Does not have an effect on housing costs.
- Does not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

- Does not significantly affect (1) the creation or elimination of jobs within the State of California; (2) the creation of new businesses or the elimination of existing businesses within the State of California; or (3) the expansion of businesses currently doing business within the State of California.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department is not aware of any cost impacts that a representative person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of the proposed regulatory action may affect small businesses.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as request for copies of the text of the proposed regulations may be directed to Karen Fong at (916) 322-3553. Inquiries regarding the substance of the proposed regulations may be directed to Mark Uyeda, Chief Advisor to the Commissioner at (916) 324-9011, or Colleen Monahan, Senior Corporations Counsel, at (916) 322-3553.

Dated: September 14, 2006
Sacramento, California

Preston DuFauchard
California Corporations Commissioner
